IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 467 OF 1993

1. Maratha Samaj Seva Mandal
   Solapur and anr. .. Petitioners

Vs.

1. Madhukar Sadashiv Vyawahare and ors. .. Respondents

Mr. M.R. Deshpande for petitioners.
Mr. Tanaji Mahatugade h/f Mr. A.V. Anturkar for respondent nos.1 to 3.
Mr. V.S. Gokhale, AGP for respondent nos.4 and 5.

WITH
WRIT PETITION NO.2544 OF 1995

1. Maratha Samaj Seva Mandal
   Solapur and anr. .. Petitioners

Vs.

1. Sharad Narayan Doke and ors. .. Respondents

Mr. M.R. Deshpande for petitioners.
Mr. Tanaji Mehatugade h/f Mr. A.V. Anturkar for respondent no.1.
Mr. V.S. Gokhale, AGP for respondent nos.3 and 4.

**CORAM : B. H. MARLAPALLE &**
**D. B. BHOSALE,JJ.**

**Date : March 24, 2006.**

**P.C.:**

1. In both these petitions filed by the petitioner - private Institution running fully aided night High School and Jr. College. The challenge is common, namely, that the order passed by the School Tribunal directing that the respondents-teachers be

treated as full time teachers in the nigh School/Jr. College.

2. It appears that the teachers were appointed as part time and approved accordingly. The Deputy Director of Education informed the Management that the teachers in the night school cannot be appointed as full time teachers and, therefore cann't be entitled for regular payscales. The said decision was intimated to the teachers concerned who, in turn, approached the School Tribunal by filing Appeal No. 147/91 and Appeal No.111/90. By the impugned order the School Tribunal declared that the appellants-teachers were full time teachers and they ought to be continued as such.

3. Affidavit in reply has been filed on behalf of the State authorities as well as the Zilla Parishad and it has been pointed out that the night Jr.College cannot impart education for more than two and half hours in the night whereas under the Secondary School Code (Rules 52.3 and 54.1) a day Jr. College is required to impart education for about five hours. It has been further pointed out that similarly placed school teachers had approached this court in W.P. Nos.5079/91, 340/92 and 3198/92 seeking the relief

that they be declared as full time teachers. All these petitions were dismissed by the Division Benches of this court.

4. If the night school or night Jr. College is required to conduct classes only for two and half hours duration, we fail to understand as to how the teachers engaged in such schools could be treated to be a full time teachers entitled for regular payscale prescribed under the MEPS Rules 1981. The view taken by this court in the above cited three writ petitions would not permit either the State Government or the Management to extend any benefit contrary to the said orders. The impugned orders passed by the School Tribunal are, therefore, unsustainable.

5. Hence, the petitions succeed and they are hereby allowed. The impugned orders passed by the School Tribunal in the above referred appeals are hereby quashed and set aside. If there are any recoveries to be made, the respondent-Management may proceed by following the due procedure in law. In case the teachers were declared surplus and have been absorbed as such in other schools, the recovery, if any, will be for the limited period i.e. upto their re-absorption. Rule made absolute accordingly.

**(D.B. Bhosale,J.)** **(B.H. Marlapalle, J.)**